

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

KATHRYN BAUMAN RUBENSTEIN,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. 1:07cv798-MHT
)
BETTY JO BAUMAN, *et al.*,)
)
Defendants.)

**OBJECTIONS TO RECOMMENDATIONS OF MAGISTRATE JUDGE
WALLACE CAPEL, JR.**

COME NOW the Defendants, Marilyn Bauman Granger, Bennie Wayne Granger, Granger Limited, Inc., Barbara Bauman Kamensky and Allan E. Kamensky, together with Lee & McInish, P.C., William L. Lee, III, Esq., Joel Weatherford, Esq, Farmer, Price, Hornsby & Weatherford, L.L.P., Lexa Dowling, Esq. and Jere Segrest, Esq., by and through their undersigned counsel and respectfully object to some of the recommendations of Magistrate Judge Wallace Capel, Jr. regarding the imposition of Rule 11 sanctions against Plaintiff Kathryn Rubenstein, on the following grounds:

1. In his memorandum opinion outlining his recommendations to Judge Thompson, Judge Capel makes several important findings and conclusions with which these Defendants certainly agree, including (a) that Rubenstein's claims were objectively frivolous; (b) that Rubenstein should have known her claims were frivolous, despite her *pro se* status; and (c) that the imposition of sanctions under Rule 11 is appropriate.

2. Judge Capel declined to recommend that the Court impose filing restrictions or award costs and attorney's fees against Rubenstein. Judge Capel reasoned that filing restrictions should only be used in "extreme conditions" inasmuch as there are a wide range of lesser sanctions that will not deprive the litigant of her day in court. Although Judge Capel recognized that awarding costs and attorney's fees are the most commonly imposed Rule 11 sanctions, he declined to award any monetary sanctions on the grounds that, according to Rubenstein's representations to the Court, she lacked the resources to pay any such sanctions¹. Instead, Judge Capel recommended that the Court merely order Rubenstein to read various cases and statutes, including Rule 11, and publicly reprimand her.

3. The Defendants accept and greatly appreciate the Court's finding that sanctions are warranted based on Rubenstein's clear violation of Rule 11 in this case, but respectfully object to Judge Capel's recommended sanctions.

4. Some of these Defendants have litigated with Rubenstein over various claims arising out of her father's Will and Trust since 2002. Each claim and cause of action since then has been determined to be without merit and subject to dismissal and/or summary judgment. The latest incarnation of her State Court action is presently pending before the Court of Civil Appeals (the third appeal thus

¹ There was evidence presented to the Court that Rubenstein receives a \$10,000.00 per year distribution from her mother's estate and disability benefits for a heart condition. Additionally, there was evidence that Rubenstein is part of the Vioxx class action settlement program. While this income is admittedly not substantial, it has never deterred Rubenstein from filing and litigating these frivolous claims in State Trial Court, State Appellate Court and Federal Court. Moreover, Rubenstein has always managed to pay sanctions and contempt citations ordered in State Court.

far) following its recent dismissal.

5. Rubenstein has been sanctioned by the State Court numerous times for not only asserting baseless claims, but also because of her uncivilized conduct in pursuing these claims. Unfortunately, despite these sanctions, Rubenstein has not once been deterred. Instead, she chose to move her venue to Federal Court.

6. Although Rubenstein has twice now attempted unsuccessfully to litigate her meritless claims in Federal Court, the undersigned fear that these cases are just the beginning and that Judge Capel's recommended sanctions, lacking any monetary component, will not deter what is clearly a campaign to perpetually fight with and harass those she feels have wronged her. While filing restrictions may be an "extreme" sanction, the Defendants respectfully believe that they are the only way to curb future abuses of these Defendants and the Court system itself.

Based upon the foregoing, the Defendants respectfully object to the sanctions recommended by Judge Capel and pray that they will be enhanced by or substituted for the more serious sanctions requested by the Defendants – costs and attorney's fees and/or filing restrictions.

Respectfully submitted this 18th day of April, 2008,

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CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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I further certify that I have served the following by placing a copy thereof in the United States Mail, postage prepaid and properly addressed to the following non-CM/ECF participants:

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/s/William W. Nichols

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